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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

16 CR 370 (CM)

5 MATTHEW CONNOLLY and GAVIN
6 CAMPBELL BLACK,

7 Defendants.

Arraignment

8 -----x

9 New York, N.Y.
10 September 28, 2016
11 10:00 a.m.

12 Before:

13 HON. COLLEEN MCMAHON,

14 District Judge

15 APPEARANCES

16 PREET BHARARA
17 United States Attorney for the
18 Southern District of New York
19 RICHARD POWERS
CAROL SIPPERLY
MICHAEL KOENIG
Assistant United States Attorneys

20 KENNETH BREEN
21 PHARA GUBERMAN
Attorneys for Defendant Connolly

22 SETH LEVINE
23 JILLIAN BERMAN
AARON KARP
Attorneys for Defendant Black

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(Case called)

MR. POWERS: Good morning, your Honor. Richard Powers. I'm joined by my colleagues, Carol Sipperly, and Michael Koenig, for the government.

THE COURT: Good morning.

MR. BREEN: Ken Breen and Phara Guberman on behalf of Matt Connolly.

MR. LEVINE: Good morning, your Honor. Seth Levine, Jillian Berman, and Aaron Karp on behalf of Mr. Black. As per our discussion at the last appearance, Mr. Black is not appearing today and has fully authorized us to speak on his behalf.

THE COURT: Thank you. Have a seat.

What do we need to do today?

THE DEPUTY CLERK: Judge, there's a superseding indictment which Mr. Connolly has not been arraigned on.

THE COURT: Would you please arraign him.

THE DEPUTY CLERK: Mr. Connolly, if you would rise.

The United States Attorney for the Southern District of New York has filed a superseding indictment, S1 16 CR 370, that charges you and your codefendant in Count One with wire fraud and bank fraud conspiracy. It charges you in Counts Two, Three, Five, Seven, Eight, Nine, and Ten with substantive counts of wire fraud. Have you received a copy of the indictment, sir?

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1 MR. BREEN: He has.

2 THE DEPUTY CLERK: Discussed it with your attorney?

3 MR. BREEN: Yes.

4 THE DEPUTY CLERK: Counsel, do you waive formal
5 reading?

6 MR. BREEN: We do.

7 THE DEPUTY CLERK: How do you plead at this time to
8 those counts?

9 MR. BREEN: Not guilty.

10 THE DEPUTY CLERK: Thank you.

11 THE COURT: Thank you.

12 What's up now? How can we move this case along?

13 MR. POWERS: Your Honor, first thing, government's
14 entered into a stipulated protective order with defendant
15 Black, and there's just one change with the one we entered into
16 with Mr. Connolly. So what the government proposes and that
17 the parties agree is that we make one protective order with
18 both parties in it so everybody's on the same footing.

19 THE COURT: I'd really like that.

20 MR. POWERS: Yes, your Honor. And then we'll file
21 that on the record.

22 THE COURT: Terrific. Great. All right. That means
23 we can start discovery. Let's talk about a schedule for this
24 case. I'd like to move this case toward a trial sometime in my
25 lifetime. So what are we talking about?

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1 MR. POWERS: Your Honor, with respect to with to the
2 discovery at this point, both parties, both defendants, have
3 the initial bulk of the discovery that the government plans to
4 make available. So that is with them. Discovery, I can kind
5 of give you highlights, your Honor, if you'd like, but includes
6 a significant volume of material gathered from Deutsche Bank:
7 chats, e-mails, and the like, 302s.

8 (Pause)

9 MR. POWERS: So they have the material from Deutsche
10 Bank: chats, e-mails, phone calls, interview reports. The
11 government has separately produced what it considers to be the
12 notable hot documents. And, of course, as the case progresses,
13 there would be additional 302s, and whatnot, that the
14 government will produce when those become available. So that
15 material, what we consider to be the bulk of the discovery in
16 this case, is with the defendants at this point.

17 THE COURT: How long do counsel want to have for
18 review of that? And then let's set a motion schedule, and I'd
19 really like to look at a trial date.

20 MR. LEVINE: May I be heard, your Honor?

21 THE COURT: What?

22 MR. LEVINE: May I be heard?

23 THE COURT: Sure.

24 MR. LEVINE: Your Honor, what we would propose is that
25 we have another conference. We would propose in January. And

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1 let me explain why. For Mr. Black, we received the hard drive
2 containing discovery on Monday, the password. It's a massive
3 thing. We have not been able to look at any of the discovery,
4 and it is something in the neighborhood of at least 16 million
5 pages of material, I believe.

6 This case has two characteristics that I think are a
7 little bit unique with respect to discovery, and if I might
8 just explain to the Court why I think so. First, the conduct
9 in this case, primary conduct, occurred almost a decade ago.

10 THE COURT: Correct. Long time ago.

11 MR. LEVINE: Second, for my client especially, all of
12 his conduct occurred outside the United States. He is, as you
13 know, a citizen of the United Kingdom, and he has almost no
14 activity in the United States whatsoever; had nothing to do
15 with this case. So for us, in addressing what is a case that
16 has been going on for years, the government has obviously taken
17 action in other areas here, it is remarkably complex. We
18 expect there's going to be a lot of international discovery.
19 So rather than --

20 THE COURT: What do you mean "a lot of international
21 discovery"? The government's going to produce -- you're not
22 going to take discovery. This isn't a civil case. The
23 government's going to produce discovery to you. You may go out
24 and do some investigating internationally.

25 MR. LEVINE: Well, your Honor, I'd ask the Court to

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1 withhold judgment on that issue. We think that there have been
2 numerous cases throughout the United Kingdom and other places.
3 We think there's tremendous amounts of *Brady* material and other
4 exculpatory evidence.

5 THE COURT: If there's *Brady* material in the
6 possession of the government -- I've already thrown out a
7 conviction. I hope the United States Attorney's Office never
8 forgets that I hold their feet to the fire on *Brady*.

9 MR. LEVINE: I'm deeply appreciative of that, your
10 Honor, and we're aware of that.

11 THE COURT: But they have to produce it. You don't
12 have to find it; they have to produce it. It has to be in
13 their possession, custody, and control. They don't have to go
14 out and locate it. That's the rule.

15 MR. LEVINE: I understand, your Honor. And to the
16 extent that the government is going to be producing materials
17 from its international partners that may substantially reduce
18 the issue, but on our first appearance talking about this case,
19 I wanted to be transparent with the Court that we do think that
20 preparation here is extremely -- will be longer than in most
21 even sophisticated white collar cases because of the nature and
22 the scope of it.

23 So what we would propose is to give us a few months to
24 look through exactly what the government has given us, and we
25 understand it's a very sizable production, and then be able to

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1 come back to the Court with a plan and with a thoughtful
2 suggestion on scheduling so that we do not have sort of, well,
3 one more thing, Judge, we didn't realize this. We'd like to do
4 this in a thoughtful way.

5 We do think, respectfully, that to properly prepare a
6 defense in this case -- and we believe this case is one that
7 the government should not have brought and has been unfairly
8 brought -- we think we are going to need substantial time
9 because it is incredibly complex, especially with respect to
10 the basic allegations of the supposed manipulation of this
11 standard internally within one bank. We think that there is
12 going to be a substantial effort needed to demonstrate why this
13 case is unfounded. We recognize the Court has a schedule. We
14 respect that. We want to move this along quickly. Our client
15 certainly would like to have his day, but we do think
16 respectfully, given the challenge here, that it is going to be
17 a little bit of a longer schedule. And we'd ask the Court's
18 indulgence until January to explain that more fully.

19 MR. BREEN: Your Honor, we agree with that. An
20 enormous task here, 16 million pages of discovery.

21 THE COURT: Sixteen million is now turning into
22 16 billion.

23 MR. BREEN: Well, it might with some of the material.

24 THE COURT: He said 16 million. You said 16 billion.

25 MR. BREEN: No, I said million.

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1 THE COURT: I don't know. It's going to be
2 16 trillion eventually.

3 MR. BREEN: I hope not.

4 THE COURT: I'm happy to set a date in January as long
5 as I set a trial date, and I'm setting a trial date, and it's
6 going to be next September. That's a lot of time.

7 MR. BREEN: Your Honor, I have a trial scheduled in
8 Wilmington, Delaware, in October/November next year.

9 THE COURT: That's too bad. Then your client will
10 have to do something about that. I said September.

11 I need a list of the Jewish holidays next year.

12 MR. LEVINE: Your Honor, may I be heard just briefly
13 on the scheduling?

14 THE COURT: Yes.

15 MR. LEVINE: I understand the Court has ruled. I
16 respectfully ask that at least we be allowed to revisit this
17 issue when we next meet.

18 THE COURT: Here's the problem. He's already got a
19 trial scheduled. You'll have trials. I'm getting this on the
20 calendar now, all right. I'm getting it on the calendar now so
21 that I don't hear in January that you all don't have any time
22 until 2020.

23 MR. LEVINE: Well, your Honor, may I suggest another
24 possible date for this trial that I think we can live with and
25 which we would live with?

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1 THE COURT: And what would that be?

2 MR. LEVINE: It would be March of '18.

3 THE COURT: Absolutely not, under no circumstances.

4 MR. LEVINE: Yes, your Honor.

5 MR. BREEN: Your Honor, January, then?

6 THE COURT: Pardon me?

7 MR. BREEN: January, then? It won't directly conflict
8 with my other trial.

9 (Pause)

10 THE DEPUTY CLERK: You wanted January?

11 THE COURT: Excuse me. January 2018. Excuse me. I
12 have to look at the calendar.

13 January 8, 2018, that's a firm trial date.

14 MR. LEVINE: Thank you very much, your Honor.

15 THE COURT: Let's set a date in January for our next
16 conference.

17 MR. LEVINE: If the 18th or 19th will be available, I
18 know we checked that with the defense, if that's acceptable to
19 the Court.

20 THE DEPUTY CLERK: The 18th would be good at 2:00
21 o'clock.

22 MR. LEVINE: Thank you.

23 THE COURT: Time excluded with the consent of counsel?

24 MR. BREEN: Yes, your Honor.

25 MR. LEVINE: Yes, your Honor.

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1 THE COURT: In the interest of justice, the
2 defendants' interest in a speedy trial being outweighed by the
3 need to conduct discovery, defense counsel asked for a long
4 trial date; therefore, as far as I'm concerned, time is
5 excluded until January 8, 2018. Any problem with that?

6 MR. BREEN: No, your Honor.

7 MR. LEVINE: No. Thank you very much, your Honor.

8 THE COURT: Anything else from the government?

9 MR. POWERS: Nothing else from the government, your
10 Honor.

11 THE COURT: Thank you.

12 Anything else from defendants?

13 MR. BREEN: No, your Honor.

14 MR. LEVINE: No. Thank you very much, your Honor.

15 MR. BREEN: Thank you.

16 THE COURT: Terrific. I'll see you in January.

17 (Adjourned)
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